

## Section 56

### VARIANCE AND ADMINISTRATIVE INTERPRETATION APPEAL PROCEDURES

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#### **56.010 Board of adjustment membership and term of office.**

The Board of Adjustment is established to act on certain variance applications as detailed in this title and on appeals where it is alleged there is error in any order, requirement, decision or determination made by administrative officers of this title. The board, as it shall be referred to for purposes of this section, only, shall consist of at least five members, appointed by the commission for two-year terms (with staggered terms). All members shall reside within the zoning jurisdiction.

#### **56.020 Organization, officers and location.**

**A.** At the first meeting of each year, the board shall appoint one of its members to serve as chairman and one member to serve as vice-chairman.

**B.** The staff of the planning department shall be at the disposal of the board to receive and process applications of appeal and to give advice to the board.

**C.** The board's office shall be that of the planning director and all files of the board shall be held therein.

#### **56.030 Powers and duties designated - Vote.**

**A.** The board shall set its operating rules in accordance with MCA section 76-2-201 *et seq.*, and shall have the following powers, except that in no event shall the board have the power to decide plan appeals provided for under Section 58, and further provided that the commission reserves to itself and its advisory agencies, the power to make any other exceptions, variations or deviations to regulations, ordinances or land use plans adopted pursuant to statute:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this title or of any title adopted pursuant thereto. Appeals will be granted upon finding that such order, requirement, decision or determination made by an administrative official is erroneous and contrary to this title or of any regulation adopted pursuant thereto;
2. To authorize, in specific cases, such variance from the terms of this title as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship, and so that the spirit of this title shall be observed and substantial justice done.

**B.** The board may, after public notice and hearing, deny, approve or conditionally approve all requests for variances due to hardship, including:

1. Requests to modify dimensional requirements of this title; and
2. Requests for multiple variances to modify dimensional requirements of this title.

Amended Resolution 2001-09

**C.** The commission reserves the right to, after public notice and hearing, deny, approve or conditionally approve the following variances:

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1. Requests for variances in conjunction with conditional use permits shall be reviewed in accordance with the CUP process. Approvals of all such variances shall be conditioned upon commission approval of the conditional use permit.

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2. Special exceptions to deviate within the Entryway Corridor Overlay District.

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**D.** In no case may the board or the commission grant variances to allow uses not already permitted pursuant to this title.

**E.** The concurring vote of four members of the board shall be necessary to reverse any order, requirements, decisions or determination of any administrative official. A reversal of the planning director's classification of a particular use shall be submitted to the commission for determination under the provisions of section 6.060.

**F.** The concurring vote of three (3) members of the board shall be necessary to grant any variance of this title.

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**G.** The concurring vote of three (3) members of the commission shall be necessary to grant requested deviations to this title.

#### **56.040 Appeals and variances - Application and investigation.**

**A. Application for Variance or Interpretation Appeals.** A request for variance proposed shall be made by filing at least twenty days prior to the board or commission meeting an application with appropriate fees with the planning director; such application shall be accompanied by a development plan showing such information as the planning

director may reasonably require for purposes of this title. The plans shall contain sufficient information for the board or commission to make a proper decision on the matter. The request shall state the

exceptional conditions and the peculiar and practical difficulties claimed as a basis for a variance. In all cases, the application shall include, and shall not be deemed filed until, all of the following is submitted:

1. Name and address of the applicant;
2. The legal description of the property involved in the request for variance, including the street address, if any, of the property;
3. The names and addresses of the owners of the property and any other persons having a legal interest therein;
4. List of names and addresses of adjacent property owners, using last declared county real estate tax records (adjacent shall include all parcels across public roads, streets, alleys, watercourses, and other public ways, and shall include the Montana Department of Transportation if adjacent to a state highway);

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5. Stamped, unsealed envelopes addressed with names of above property owners;
6. A site plan drawn to scale showing the property dimensions, grading, landscaping and location of utilities, as applicable;
7. Location of all existing and proposed buildings;
8. Drive accesses, driveways, access roads, parking spaces, off-street loading areas, and sidewalks as applicable;
9. The variance requested and the reasons for the request;
10. Justification, in writing of subsections A, B and C of section 56.060;
11. Evidence satisfactory to the board of adjustment or commission of the ability and intention of the applicant to proceed with actual construction work in accordance with said plans within six (6) months after issuance of permit;
12. Required filing fee; and
13. In the case of an administrative interpretation appeal evidence to prove that the decision or action of the official was incorrect or in violation of the terms of this title.

**B. Investigation of Facts.** The board or commission shall cause to be made such investigation of facts bearing on the application as will provide necessary information to assure that the action on each such application is consistent with the intent and purpose of this title. During time of appeal all construction shall cease and shall not commence until approved by the board of adjustment or commission.

**56.050 Interpretations and variances - Hearing and notice requirements.**

**A.** There shall be a hearing for each application of an interpretation appeal or variance. The hearing shall be held at an appointed time and place. Testimony shall be taken by the board or commission from persons interested in the application, and from the planning staff.

**B.** The planning director shall give public notice of all public hearings to be held before the board of adjustment or commission. The notice shall be published at least once in a newspaper published and having general circulation in the county, not more than thirty (30) days nor less than ten (10) days prior to the public hearings.

**C.** The notice shall specify the number, date, time and place of all scheduled public hearings. It shall state the name and address of the applicant, the name and address of the owner of the property, and a legal description of the property affected, the street address, or its location by approximate distances from the nearest major street or road intersection so that the property can be easily identified, and a brief statement of the nature of the hearing '

**D. *Subsection deleted.***

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**E.** In addition to such publication, the notice of public hearing shall be posted not more than thirty (30) days nor less than ten (10) days prior to the public hearings, on the site in question as well as on one or more additional locations, visible to the general public, within the affected area as deemed appropriate by the planning director.

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**F. *Subsection deleted.***

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**G.** Such notice shall be sent by mail not more than thirty (30) days nor less than ten (10) days prior to the public hearings, to the applicant and owners of record (or their legal representative) of the subject property as well as to the owners of record of all parcels adjacent to the subject property. Adjacent shall include all parcels across public roads, streets, alleys, watercourses and other public ways, and shall include Montana Department of Transportation if adjacent to a state highway.

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**H.** If for some reason, a required property owner fails to receive mailed notification of a scheduled public hearing, or if one or more of the required posted signs in the area or on the site for which the public hearing is being held, is inadvertently removed through no fault of the county, this in no way shall invalidate the legal notice requirement of the scheduled public hearing.

**I.** Notice may also be provided to property owners in any additional area that may be substantially impacted by the proposed variance as determined by the planning director.

**56.060 Variances - Criteria for consideration.**

In approving an application for a variance, the board or commission shall designate such lawful conditions as will secure substantial protection for the public health, safety and general welfare, and shall find as follows:

**A.** That the variance will not be contrary to the public interest;

**B.** That a literal enforcement of this title will result in unnecessary hardship owing to conditions unique to the property;

**C.** The spirit of this title will be observed and substantial justice done.

**56.070 Variances - Conditions of approval.**

Any approval under this section shall be subject to the terms of the conditions designated in connection therein.

**56.080 Appeals from board of adjustment or commission determinations.**

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or commission under this section, or any taxpayer, or any officer, department, board or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal in whole or in part specifying the grounds of illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board or commission.

**56.090 Effective time for board or commission decisions-Variations void when.**

The decision of the board of adjustment or commission shall be final except as provided in section 56.080 and if a building permit is not obtained for the subject property within six (6) months from the date of the board or commission's decision, the variance shall be automatically canceled and become null and void.